

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

A. D. ARMSTRONG,

Petitioner,

vs.

WARDEN, LEBANON CORRECTIONAL  
INSTITUTION,

Respondent.

:

:

:

:

Case No. 3:06cv219

JUDGE WALTER HERBERT RICE

---

---

DECISION AND ENTRY ADOPTING REPORT AND RECOMMENDATIONS  
OF UNITED STATES MAGISTRATE JUDGE (DOC. #60), AND  
OVERRULING PETITIONER'S OBJECTIONS THERETO (DOC. #62);  
JUDGMENT TO BE ENTERED IN FAVOR OF RESPONDENT AND  
AGAINST PETITIONER, UPON THE MERITS, DISMISSING SAME WITH  
PREJUDICE; LEAVE TO APPEAL *IN FORMA PAUPERIS* DENIED; ANY  
REQUESTED CERTIFICATE OF APPEALABILITY WILL BE DENIED;  
TERMINATION ENTRY

---

---

Pursuant to the reasoning and citations of authority set forth by the United States Magistrate Judge in his Report and Recommendations filed January 15, 2009 (Doc. #60), as well as upon a thorough *de novo* review of this Court's file and the applicable law, said Report and Recommendations are adopted in their entirety. The Petitioner's Objections to said judicial filing are overruled.

In ruling as aforesaid, this Court makes the following, non-exclusive observations.

1. Petitioner has set forth no grounds to justify the removal of Magistrate Judge Merz or to accomplish a change of venue.

2. The Petitioner's Objections do not address his claim of actual innocence or the Magistrate Judge's conclusions that, upon the merits, such claim must fail, given the fact that the evidence in question was not newly-discovered.

WHEREFORE, based upon the aforesaid, this Court, in adopting the Report and Recommendations of the United States Magistrate Judge, and overruling the Petitioner's Objections thereto, directs the entry of judgment in favor of the Respondent and against Petitioner, denying the Petition for Writ of Habeas Corpus upon its merits and dismissing same with prejudice. Given that reasonable jurists would not disagree with this conclusion, and, further, that Petitioner has failed to make a substantial showing of the denial of a constitutional right, this Court denies the Petitioner a Certificate of Appealability. Further, given that any appeal from this Court's decision would be objectively frivolous, this Court denies the Petitioner the right to appeal *in forma pauperis*.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.<sup>1</sup>

/s/ Walter Herbert Rice

March 3, 2009

---

WALTER HERBERT RICE  
UNITED STATES DISTRICT JUDGE

Copies to:

A. D. Armstrong, Pro Se Petitioner  
Hilda Rosenberg, Esq.  
Mark J. Zemba, Esq.  
Stephanie L. Watson, Esq.

---

<sup>1</sup>The Petitioner's letter of January 21, 2009, has been docketed at Doc. #63, and considered by the Court in reviewing the captioned file and in rendering its decision herein.